

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE NINTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.27206 of 2003

Between:

Dr. P.Chinnaiah, S/o P.Peddaiah,
I.A.S.E., S.V.University, Tirupathi,

R/o Tirupathi, Chittoor District.

..... PETITIONER

AND

- 1 The Union of India, Ministry of Human Resource Development (M.H.R.D),
Rep.by its Secretary, Department of Elementary Education and Literacy,
Sastry Bhavan, New Delhi - 110001.
- 2 The Secretary to Government, School Education Department,
Govt.of A.P. Secretariat, Hyderabad.
- 3 Sri Venkateswara University, Tirupati, Chittoor District

rep.by its Registrar.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, Order or direction, more particularly one in the nature of Writ of Mandamus, declaring the action of the 3rd Respondent in giving artificial breaks in the service of the petitioner, with holding his salary to which he is entitled in terms of the advertisement dated 28-05-2003 as well as the Proceedings No.E.II(2)/IASE/2004, dated 7-8-2004 issued by the 3rd respondent as arbitrary, discriminatory and illegal and consequently direct the Respondent to pay to the petitioner the difference of salary equivalent to the minimum pay of a regular employee in cadre of Lecturer in terms of the Advertisement dated 28-05-1998 and continue him without giving breaks his service in terms of the letter No.4976/Trg.2/2003-1 dated 23-10-2003 of the Second Respondent and with all

other consequential benefits, monetary and otherwise.

Counsel for the Petitioner: Mr.V.JAGAPATHI

Counsel for Respondent No.1:Mr.ARAJASHEKAR REDDY (SC FOR CG)

Counsel for Respondent No.2: G.P. for School Education

Counsel for Respondent No.3: Mr. P.Sree Ramulu Naidu

The Court made the following :

ORDER:

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Originally, the writ petition has been filed seeking a Mandamus declaring the action of the 3rd respondent in giving artificial breaks in the service of the petitioner and withholding the salary to which he is entitled to in terms of the Advertisement dated 28-5-1998 as arbitrary and illegal and consequently to direct the respondents to pay difference of salary equivalent to minimum pay of a regular employee in the cadre of Lecturer without any break in service. Thereafter, the petitioner sought to challenge the termination Order dated 7-8-2004 passed by the 3rd respondent in his Proceedings No.E.II(2)/IASE/2004 as being illegal.

According to the petitioner, Institute of Advanced Studies in Education (IASE), Sri Venkateswara University, Tirupati, invited applications through Advertisement dated 28-5-1998 from the eligible candidates for both teaching and non-teaching positions purely on temporary and contractual basis for one year. Even retired persons and candidates above 45 years of age with adequate experience were also permitted to apply. It was stated in the advertisement that the persons selected will be paid consolidated amount without any allowances and other benefits depending upon their qualifications and experience and the minimum consolidated amount would be comparably equal to the minimum salary of a regular employee of that cadre in the case of fresh recruits and it is negotiable in case of inservice, experienced and retired persons. The persons selected should execute an agreement of contract for service with the University and should abide by it. The petitioner applied for the post of Lecturer and was selected by a duly constituted selection committee and was

appointed as a Lecturer (Assistant Professor) in Educational Philosophy in IASE for a period of one year, by Proceedings dated 30-1-1999 of the 3rd respondent. He joined in service on 1-2-1999. By Proceedings dated 3-3-2000, the 3rd respondent renewed the contract appointment of the petitioner for one more year with effect from 1-2-2000. It was further extended by another year by Proceedings dated 28-2-2001 of the 3rd respondent. However, by Proceedings dated 21-3-2001, the pay of the petitioner was reduced. On 13-12-2001 the Principal of IASE had sent proposals through the 3rd respondent claiming reimbursement of his salary and others at the rate equivalent to the minimum pay of a regular Lecturer. By Proceedings dated 1-2-2002 of the 3rd respondent, the tenure of appointment of the petitioner was extended by three months.

By letter dated 26-3-2002, Government of India conveyed sanction for payment of entire expenditure incurred by the 3rd respondent for IASE project for the years 1998-99 to 2000-01. Thereafter, the Government of India also sanctioned and released funds in favour of the 3rd respondent for the year 2001-02 by letter dated 9-5-2002. In consonance with the orders of Government of India, State Government issued G.O.Ms.No.61, dated 12-7-2002 releasing amount in favour of 3rd respondent and others. Petitioner made a representation on 18-2-2003 for payment of salary due to him on par with regular employees from the date of his appointment. In the meanwhile, by an order dated 7-5-2003, the services of the petitioner were discontinued. However, the Government of India by letter dated 29-5-2003 intimated the 3rd respondent that IASE scheme would be continued during the 10th plan period i.e. upto 31-3-2007 and by letter dated 2-6-2003 the Principal Secretary to Government of Andhra Pradesh also directed the 3rd respondent to continue the existing staff in IASE. Consequently, the Executive Committee by resolution dated 14-6-2003 resolved to continue the existing staff of IASE. Thus, by Proceedings dated 4-7-2003, the 3rd respondent had taken back all the existing staff including the petitioner; however, only consolidated pay of Rs.7,500/- per month was paid. State Government by letter dated 23-10-2003 addressed to the 3rd respondent also directed to continue the existing staff appointed in IASE during the 10th plan period.

It is the case of the petitioner that since he was appointed in terms of Notification dated 28-5-1998 he is entitled for being paid on par with regular University

Lecturers. At the time of his appointment, Rs.7,500/- per month was paid to him since that was the minimum pay, which was being paid to the regular Lecturers. But, thereafter, there was increase in the pay scales of the regular Lecturers and, therefore, he is entitled for difference of salary. It is his further case that while admitting the writ petition, in W.P.M.P.No.34474 of 2003, dated 31-12-2003 this Court passed an interim order directing the respondents to continue the petitioner in service and in W.P.M.P.No.34475 of 2003 also an interim order was passed directing the 3rd respondent to pay salary to the petitioner equivalent to the minimum salary of regular employee in the cadre of Lecturer in terms of the advertisement dated 28-5-1998. But, by an order dated 7-7-2004 in W.V.M.P.No.896 of 2004, this Court vacated the interim order passed in W.P.M.P.No.34474 of 2003 holding as under:

“The other teachers working in the IASE had filed writ petitions seeking continuation in service and this Court had an occasion to consider the circumstances involved in such a relief sought and by the order dated 23-04-2004 in W.P.M.P.No.8530 of 2004 in W.P.No.6594 of 2004 and batch this Court directed the respondent-University as under:

...to consider the engagement/continuance of the petitioner in the respective posts in which they were initially engaged by the respondent, by extension of the contract, if funds are available, which are allocable for payment of salaries to the employees of IASE and if the previous service rendered by the respective petitioners is not such as to disentitle consideration of their cases for such continuance in service. If the petitioners are all qualified and eligible for such continuance in the posts in which they are initially appointed on contract basis and subject to availability of funds and if their previous service is not unsatisfactory warranting non-extension of contractual tenure to them, in such case, the 3rd respondent-University shall continue these petitioners in service and shall not engage any other persons on a contractual tenure replacing the petitioners. If, however, the service of any of the petitioners is found to be unsatisfactory, liberty is preserved in the 3rd respondent-University to take appropriate academic and administrative measures in the interest of academic excellence in the IASE.

In view of the fact that these orders govern the case of the writ petitioner herein also, the interim order dated 31-12-2003 is vacated and the 3rd respondent-University is directed to consider the case of the writ petitioner for engagement or continuance in service in the post of Lecturer in Educational Philosophy in terms of the order of this court dated 23-4-2004 in W.P.M.P.No.8530 of 2004 in W.P.No.6594 of 2004 and batch.”

Insofar as the order passed in W.P.M.P.No.34475 of 2003 is concerned, the same was made absolute and W.V.M.P.No.897 of 2004 was dismissed, since the standing counsel for respondent-University represented that the petitioner is being paid salary and emoluments in the cadre of Lecturer in the University in terms of the

advertisement dated 28-5-1998. Since the interim order in W.P.M.P.No.34474 of 2003 was vacated, the services of the petitioner were dispensed with by an Order dated 7-8-2004 of the 3rd respondent. Therefore, the petitioner sought amendment of the prayer in the writ petition questioning the said Order dated 7-8-2004, by way of W.P.M.P.No.21135 of 2004, which was allowed on 30-9-2004.

In the detailed counter affidavit filed by the 3rd respondent while denying the allegations made by the petitioner, it is stated that the appointments were made after selection by a duly constituted selection committee in the month of January,1999. The Teachers were appointed to IASE as per Executive Council Confidential Resolution dated 30-1-1999 on contract basis with a condition that their assignments were purely on contract basis and that will not count for university service and their services are terminable at any point of time without prior notice. It is also stated that the State Government has sanctioned an amount of Rs.49,71,000/- towards recurring expenditure for IASE vide G.O.Ms.No.64, dated 27-9-1999. The Government was further requested to release the recurring grant of Rs.49,71,000/- to IASE to meet the immediate commitments in payment of salaries to staff and also to implement other research schemes in the Centre. Till March,2004 the salaries of IASE staff from the date of their joining are being paid from the Capital Section @ Other Miscellaneous Grants Account. The services of the staff members working in the IASE were extended for a period of one year in two spells i.e. during the year 2000 and 2001 by the Executive Council Resolution dated 12-1-2001 and as per the Proceedings of the 3rd respondent dated 3-3-2000 and 28-2-2001 on contract basis. Further, in view of the proposals submitted by the Principal, IASE for sanction of recurring grant to Ministry of Human Resources Development (MHRD), New Delhi as per the Executive Council Resolution No.E-3, dated 24-1-2002, the tenure of appointment of IASE staff were extended upto 30-4-2002 after giving a day break on a consolidated salary and they were instructed to execute fresh agreements for the said period on the same terms and conditions. Since the MHRD agreed to reimburse the expenditure incurred by IASE during the period 1997-98 to 2001-02 after adjusting the grant already released, the Executive Council in its resolution dated 4-10-2002 extended the tenure of appointment upto 2-5-2003 on contract basis on the same terms and conditions. Further, as per E.C. Resolution No.5, dated 7-5-2003, the services of the staff of IASE, who were on the rolls as on 2-5-2003, were dispensed with effect from 3-5-2003. Since Government of India through its letter

dated 3-6-2003 expressed that the scheme of IASE will be implemented during 2003-04 and consequent on the State Government's request to the University to continue the existing staff of IASE, the services of IASE staff, which were dispensed with, were taken from 1-7-2003 until further orders on contract basis. Again, their services were dispensed with as per the Resolution of the Executive Council dated 17-1-2004 with effect from 30-1-2004 and were again taken back with effect from 3-2-2004 with existing salary structure and on contract basis. Insofar as receiving of grant and payment of salaries to the IASE staff is concerned, a detailed statement was given in the counter and stated that the 3rd respondent-University is acting purely on the instructions given by the Government of India (MHRD) and State Government, which are binding on it to continue the staff as and when grants are received from funding agencies. Likewise, recently, the State Government in its letter dated 23-10-2003 assured that the existing staff in IASE be continued for the academic year 2003-04 in view of the letter of Government of India dated 29-5-2003 and based on the assurance given by the State Government, orders were issued taking the services of the staff in IASE with effect from 3-2-2004 for three months on contract basis with the same terms and conditions.

In the additional counter affidavit filed by the 3rd respondent, it is stated that the consolidated pay of the staff of IASE was fixed keeping in view the Revised Pay Scales-1986 of Teachers, which were prevailing at that time. Subsequently, during the year 1999, the State Government issued G.O.Ms.No.208, dated 29-6-1999 revising the pay of the teachers working in the Universities. From 1999 onwards, the staff of IASE have been constantly requesting the University to enhance their consolidated pay basing on the RPS-1996 implemented to the teachers of the University. In view of the said request, the University submitted proposals to the funding agency with consolidated pay on the enhanced rates. It is only an estimated proposal, but not the actual grant received from the funding agency towards salaries to the staff working in IASE. But, the figures given by the petitioner in the writ affidavit towards salaries of the staff in IASE are quite incorrect. It is relevant to extract the statement showing the individual salary particulars of the staff working in IASE from February, 1999 to March, 2003, which was also sent to the MHRD, New Delhi through the Commissioner and Director of School Education, Government of Andhra Pradesh.

S.No.	Year	Date of receiving	D.D./G.O.No.	Amount Rs.
1	1998-99 to 1999-2000	June,2000	F.45-1/99-TE 11 July,99	38,71,000
2	2000-2001	Feb.2001	SBH 903303, dt.21- 9-2000	19,00,000
3	Reimbursement of expenditure for the period 1997-98 to 2000-2001	2002-2003	12 Edn (SE-Trg) dt.12-07-2002	6,23,428
4	Reimbursement of expenditure for the period 1997-98 to 2001-2002	2002-2003	61 Edn (RRG-II) dt.12-7-2002	35,24,935
Total grant from Govt.of India from 1998-99 to 2001-02				99,19,363.00

*Grants had to be released for the academic years 2002-03 and 2003-04.

TOTAL AMOUNT SPENT FOR SALARIES OF IASE STAFF FOR THE PERIOD 1998-99 TO 2002-03.

Sl.No.	Year	Amount
1	1998-1999	Rs.1,85,175.00
2	1999-2000	Rs.18,61,509.00
3	2000-2001	Rs.24,35,179.00
4	2001-2002	Rs.18,86,337.00
5	2002-2003	Rs.20,76,670.00
	Total	Rs.84,44,870.00

The allegation of the petitioner that the University has not paid him salary to the extent grants received from the Central Government is not correct, since the actual expenditure is based on the actual salaries paid to the staff at the rates as entered into agreement by the Staff of IASE. The University has submitted the Utilization Certificate to the MHRD vide letter dated 13-10-2003 for the amounts spent for the salaries of IASE staff as certified by the Finance Officer of the University. As per letter dated 29-5-2003 of MHRD it was informed that the working group recommended a substantial revision in the scheme regarding pattern of assistance to the Institutions including IASEs. The revised guidelines for the scheme are yet to be approved by the Cabinet. On getting the approval, the scheme would be implemented during 2003-04 in its revised form and would continue during X plan period. Since MHRD itself is not specific with regard to continuation of the scheme,

the University is forced to give extension to the staff working in IASE depending upon the communications as and when received from the funding agencies and if the Government decides to wind up the scheme of IASE or make substantial revision in the scheme, the University shall have to wind up the programmes of IASE and terminate the services of all the staff because the University has no other source of funds to run IASE in its present form. It is also stated that as per the orders of this Court dated 7-7-2004, the services of the petitioner were dispensed with by issuing Proceedings dated 7-8-2004 and the University has not given any extension of contract to any persons.

Learned counsel for the petitioner contended that the 3rd respondent-University, in fact, sent proposals for payment of salary on par with regular University Teachers. The same was recommended by the Government of Andhra Pradesh and ultimately it was approved by the Ministry of Human Resource Development, New Delhi. In spite of this, the petitioner is not paid his salary on par with regular teachers of the University in consonance with the advertisement dated 28-5-1998. He further contended that the scheme of IASE has been extended to be continued during the 10th plan period also i.e. upto 31-3-2007; whereas, the services of the petitioner were dispensed with as if there was a direction from this Court to do so. Therefore, the petitioner is entitled for differential wages from 1998-99 till 7-8-2004. Further, the petitioner is entitled to be continued in service on par with others, since the MHRD had extended the scheme upto 31-3-2007. Therefore, dispensing with the services of the petitioner with effect from 7-8-2004 is arbitrary and illegal.

Learned counsel for the 3rd respondent contended that though the University claimed revised pay scales for IASE staff on par with University teachers and though they were sanctioned, only the actuals were taken into consideration for the purpose of meeting the salaries of the petitioner.

No doubt, in the advertisement dated 28-5-1998 it was made clear that the fresh recruits appointed on contract basis are entitled for minimum consolidated amount comparably equal to the minimum salary of a regular employee of that cadre, towards salary. In fact, the petitioner was paid Rs.7,500/- per month, which was the minimum salary of a regular Lecturer of the University when he was appointed for the first time. However, learned counsel for the petitioner could not bring it to the notice of the Court that even under the renewed contract from year to year, the

respondent-University is bound to pay salary on par with the regular Lecturer of the University. May be, the University authorities claimed salary against the petitioner and like people as applicable to regular Lecturers and may be in one or two cases, it was also sanctioned; but that itself does not mean that the petitioner is entitled for salary on par with regular Lecturer after renewal of his contract from time to time. Under these circumstances, the respondent-University was paying only consolidated amount of Rs.7,500/- per month to all such people. Simply because it was mentioned in the counter that the renewal of contract was on the same terms and conditions, that does not mean that it is also inclusive of the condition that the petitioner is entitled to claim salary on par with other regular University Lecturers. It is the positive assertion of the respondent-University that they have claimed such amounts and in fact, they were granted, but since the petitioner is entitled for only minimum salary of Rs.7,500/- per month, the same was paid to him. The actual amount paid towards salary of the petitioner was credited to the salary account and the rest of the amount was utilized for other purposes. Therefore, it cannot be said that the petitioner is entitled for salary on par with regular Lecturer, since he is working on contract basis.

Insofar as the continuation of the petitioner on contract basis is concerned, there is no dispute that in the 10th plan programme, the scheme of IASE was extended upto 2007. But, in the additional counter affidavit, the University specifically stated that as on 2-11-2004, no IASE funds, which are allocable to the payment of salaries for employees of IASE by the Federal Government, were available with them. Therefore, the Executive Council passed a resolution on 12-6-2004 dispensing with the services of petitioners, who have filed writ petitions; but, the petitioner was continued upto 7-8-2004 in view of the interim orders of this Court and as on date there was no contract between the University and the petitioner. It is also stated that as and when the funds are received from the Central Government, either continuing or engaging the services of the petitioner arises. Be that as it may, it is not the case of the respondents that the petitioner is not entitled for being continued for any other reason except for the reason that no such person is being continued and the funds are not available.

In the above circumstances and particularly in view of the assertions made by the University in its additional counter, the respondents are directed to consider the case of the petitioner for re-engagement in case the scheme of IASE is being

continued till the end of X plan period as was sanctioned by the Central Government and if the funds are made available to the University.

Accordingly, the writ petition is disposed of. No costs

09-12-2004

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ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

- 1 The Secretary, Ministry of Human Resource Development (M.H.R.D),
Department of Elementary Education and Literacy,
Union of India, Sastry Bhavan, New Delhi - 110001.
- 2 The Secretary to Government, School Education Department,
Govt.of A.P. Secretariat, Hyderabad.
- 3 Sri Venkateswara University, Tirupati, Chittoor District

rep.by its Registrar.

4. 2CCs to G.P. for School Education, High Court Buildings, Hyderabad (OUT)
5. 2CD copies

